

DAN RAYFIELD
Attorney General
BENJAMIN GUTMAN
Solicitor General
DENISE G. FJORDBECK
Attorney-in-Charge
Civil/Administrative Appeals
1162 Court St.
Salem, Oregon 97301
Telephone: (503) 378-4402

Counsel for State Defendants-Appellants
Hormann, Krings, Riddle, Wilcox and Oregon State Police

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on
behalf of S. M., a minor,

Plaintiffs-Appellees,

USDC No. 6:20-cv-01163-MTK
(Lead Case)

v.

MARK DANNELS, PAT DOWNING,
SUSAN HORMANN, MARY KRINGS,
KRIS KARCHER, SHELLY MCINNES,
RAYMOND, MCNEELY, KIP
OSWALD, MICHAEL REAVES, JOHN
RIDDLE, SEAN SANBORN, ERIC
SCHWENNINGER, RICHARD
WALTER, CHRIS WEBLEY,
ANTHONY WETMORE, KATHY
WILCOX, CRAIG ZANNI, DAVID
ZAVALA, ESTATE OF DAVID E.
WILCOX, VIDOCQ SOCIETY, CITY
OF COQUILLE, CITY OF COOS BAY.
And COOS COUNTY,

Defendants-Appellants.

NICHOLAS JAMES MCGUFFIN, as
an individual and as guardian ad
litem, on behalf of S. M., a minor,

Plaintiffs-Appellees,

v.

OREGON STATE POLICE,

Defendant-Appellant

USDC No. 3:21-cv-1719-MK
(Trailing Case)

NOTICE OF APPEAL

Notice is given that State defendants-appellants, Hormann, Krings, Riddle, Wilcox and Oregon State Police, hereby appeal, to the United States Court of Appeals for the Ninth Circuit from the order, issued on March 21, 2025, by the Honorable Mustafa T. Kasubhai of the United States District Court for the District of Oregon. Judge Kasubhai's order has yet to be entered (Judge Kasubhai characterized it as a "preliminary ruling letter" that would be entered into the file as "correspondence" although it is dispositive on multiple issues including State defendants' qualified immunity defense).

This case was originally filed in the US District Court July 20, 2020. A notice of appeal was filed on April 15, 2025, by non-state defendants Dannels,

///

///

///

///

///

Shapiro, Karcher, McNeely, Oswald, Reaves, Sanborn, Schwenninger, Webley,
Zanni and Zavala.

Respectfully submitted,

DAN RAYFIELD
Attorney General
BENJAMIN GUTMAN
Solicitor General

/s/ Denise G. Fjordbeck

DENISE G. FJORDBECK #822578
Attorney-in-Charge
Civil/Administrative Appeals
denise.fjordbeck@doj.oregon.gov

Attorneys for Defendants-Appellants
Hormann, Krings, Riddle, Wilcox and
Oregon State Police



**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

WAYNE L. MORSE UNITED STATES COURTHOUSE
405 EAST EIGHTH AVENUE
EUGENE, OR 97401
Tel: 541-431-4120 Fax: 541-431-4129

MUSTAFA TAHER KASUBHAI
UNITED STATES DISTRICT JUDGE

March 21, 2025

Re: Preliminary ruling on Defendants' Motions for Summary Judgment

McGuffin v. Dannels (20-cv-01163-MTK) (lead case)
McGuffin v. Oregon State Police (21-cv-1719-MTK) (trailing case)

Dear Counsel,

As you are all aware the following motions for summary judgment are before the Court: (1) Motion for Summary Judgment, ECF No. 281, filed by Defendants City of Coos Bay, City of Coquille, Coos County, Mark Dannels, Pat Downing, Kris Karcher, Shelly McInnes, Raymond McNeely, Kip Oswald, Michael Reaves, Sean Sanborn, Eric Schwenninger, Joel D. Shapiro, Chris Webley, Anthony Wetmore, Craig Zanni, and David Zavala ("Municipal Defendants"); (2) Motion for Summary Judgment, ECF No. 294, filed by Susan Hormann, Mary Krings, Oregon State Police, John Riddle, and Kathy Wilcox ("State Defendants"); (3) Motion for Summary Judgment, ECF No. 287, filed by Defendant Vidocq Society; and (4) Motion for Summary Judgment, ECF No. 314, filed by Defendant Richard Walter.

Below is a summary of my preliminary ruling on the present motions. A detailed Opinion and Order with the Court's reasoning will be docketed before trial. The purpose of this letter is to provide sufficient notice to you that Defendants' motions are unavailing except possibly on the issue of testimonial immunity. My detailed Opinion and Order will address all issues properly raised. If I have not addressed a specific summary judgment argument against a claim, it is because it remains under advisement and will be addressed in my Opinion and Order. I am providing this notice so the parties will have adequate time to prepare and submit the materials ordered in a Trial Management Order you will receive shortly. Because most of Defendants' issues raised in their motions for summary judgment are denied, this matter remains for trial beginning September 15, 2025.

The Trial Management Order requires the parties to confer and submit a joint schedule for presentation of evidence, taking into consideration the dates and times I have blocked out and provided to you in the Trial Management Order. I appreciate this trial will take several weeks. While counsel

previously represented that this trial may take up to two months, the parties are ordered to submit a joint schedule that allows for six weeks (September 15-October 24). One additional reason I am providing this preliminary ruling is so that parties will also have additional time to explore settlement. Finally, I am vacating the scheduled oral argument on the motions for summary judgment.

Municipal Defendant's Motion for Summary Judgment

First Claim for Relief¹ — Count 1: Fourteenth Amendment; and Count 4: Failure to Disclose Exculpatory Evidence (*Brady and Youngblood*)

The Court's Decision: Denied. However, testimonial immunity may apply to Defendants with respect to any claims relating to Defendants' testimony. I understand there will likely be evidentiary objections and will address them at the pre-trial conference.

First Claim for Relief — Count 2: Malicious Prosecution

The Court's Decision: Denied.

First Claim for Relief – Count 3: Illegal Pretrial Detention Following the Issuance of Legal Process

The Court's Decision: Denied.

First Claim for Relief – Count 5: Failure to Intervene; and Count 6: Conspiracy

The Court's Decision: Denied.

First Claim for Relief – Count 7: Destruction of Exculpatory Evidence

The Court's Decision: Denied with respect to Defendant Karcher, and granted with respect to remaining municipal defendants.

First Claim for Relief – Count 8: *Monell*

The Court's Decision: Denied.

Qualified Immunity

The Court's Decision: Denied.

¹ All counts under Plaintiffs' First Claim for Relief are brought under 42 U.S.C. § 1983 for violations of various Constitutional rights under or incorporated by the Fourteenth Amendment.

First Claim for Relief – Count 9: Violation of S.M.’s Fourteenth Amendment Rights

The Court’s Decision: Denied.

Second Claim for Relief – False Imprisonment²

The Court’s Decision: Denied.

Third Claim for Relief – Malicious Prosecution

The Court’s Decision: Denied.

Fourth Claim for Relief – Civil Conspiracy

The Court’s Decision: Denied.

Fifth Claim for Relief – Negligent Training and Supervision

The Court’s Decision: Denied.

Sixth Claim for Relief – Intentional Infliction of Emotional Distress (“IIED”)

The Court’s Decision: Denied.

Seventh Claim for Relief – Negligent and/or Intentional Spoliation of Evidence

The Court’s Decision: Denied.

Eighth Claim for Relief – Attorney Fees Pursuant to 42 U.S.C. § 1988(b)

The Court’s Decision: Denied.

² Plaintiffs’ Second through Seventh Claims for Relief are brought under Oregon law.

State Defendants' Motion for Summary Judgment³

State Defendants raise several of the same bases as Municipal Defendants for summary judgment on parallel claims Plaintiffs bring against both groups of defendants.

The Court's Decision: Denied. I have considered the arguments State Defendants raise and Plaintiffs' response. There remain substantial disputes of fact remaining for a jury to decide.

³ For the reasons stated in the Court's January 10, 2025 Order (ECF No. 309), the Court did not consider any of the content beyond page 50 of State Defendants' Motion for Summary Judgment, and any issues State Defendants raised within the stricken content is disregarded as not properly before the Court.

Vidocq Society's Motion for Summary Judgment

Whether Plaintiffs cannot establish liability under § 1983 upon *Monell* because Vidocq is a private entity, was not acting under color of state law, and its conduct did not amount to state action.

The Court's Decision: Denied.

Whether Plaintiffs cannot establish liability under *Monell* because they cannot establish that Vidocq's conduct proximately caused the deprivation of their constitutional rights.

The Court's Decision: Denied.

Whether Plaintiffs cannot establish elements of their state-law claims.

The Court's Decision: Denied.

Whether Plaintiff S.M. cannot recover for loss of consortium under § 1983 or under Oregon state law.

The Court's Decision: Denied.

Whether Plaintiffs' claims are barred by issue preclusion (collateral estoppel).

The Court's Decision: Denied.

Mr. Walter's Motion for Summary Judgment

Defendant Walter raises on summary judgment many of the issues raised in the other Defendants' motions for summary judgment as those issues pertain to him.

The Court's Decision: Denied.

I understand there are several sub-arguments to each of the issues raised on summary judgment. My decision denying the primary issues necessarily involved denial of the sub-arguments, and so I did not address them separately in this preliminary ruling letter. This letter will be entered in the case file as correspondence to counsel.

Sincerely,

/s/ Mustafa T. Kasubhai

Mustafa Taher Kasubhai (he/him)
United States District Judge
United States District Court for the District of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2025, I directed the Notice of Appeal to be electronically filed with the Clerk of the Court for the United States District Court for the District of Oregon by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that on April 16, 2025, a copy of the Notice of Appeal was sent via certified mail, return receipt requested, in an envelope with postage pre-paid to the following:

Andrew C. Lauersdorf
Janis C. Puracal
Maloney Lauersdorf Reiner PC
1111 E. Burnside St., Ste. 300
Portland, OR 97214

Robert E. Franz, Jr.
Sarah Rose Henderson
Franz & Henderson
P.O. Box 62
Springfield, OR 97477

David B. Owens
Loevy & Loevy c/o
P.O. Box 85110
William H. Gates Hall, Ste. 265
Seattle, WA 98145

Eric Scott DeFreest
Luvaas Cobb
777 High St., Ste. 300
P.O. Box 10747
Eugene, OR 97440-2747

Anthony R. Scisciani, III
Lisa E. Lear
HWS Law Group
101 SW Main St., Ste. 1605
Portland, OR 97204

Meredith Sawyer
Kelsey Lynn Shewbert
HWS Law Group
1500 Fourth Ave., Ste. 200
Seattle, WA 98101

/s/ Denise G. Fjordbeck

DENISE G. FJORDBECK #822578
Attorney-in-Charge
Civil/Administrative Appeals
denise.fjordbeck@doj.oregon.gov

Attorney for Defendants-Appellants
Hormann, Krings, Riddle, Wilcox and
Oregon State Police